SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1948

No. 818

HELEN E. FARMAKIS,

Petitioner,

vs.

ELEANOR T. FARMAKIS AND UNITED STATES OF AMERICA,

Respondents

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF FOR RESPONDENT, ELEANOR T. FARMAKIS, IN OPPOSITION

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Summary of Argument

The verdict of the trial court was amply supported by the evidence which showed that insured intended to change the beneficiary of his insurance to respondent and that he performed the requisite affirmative act to give effect to his intention. The Circuit Court of Appeals, therefore, properly affirmed (172 F. (2d) 291).

Argument

This case involves no question of law. It presents only a question of whether or not the evidence produced at the trial before the court, sitting without a jury, was sufficient to justify the verdict. Both the District Court and the court below were of the opinion that the evidence clearly showed that this respondent adequately met the burden of meeting the requirements of showing an intention on the part of the insured to change the beneficiary of his insurance and sufficient affirmative action to give effect to this intention.[1]

The evidence of the insured's intention to change the beneficiary and of the affirmative action is overwhelming. The insured told respondent that he was going to make the change and then that he had made it (R. 25-26). He told two former service buddies that he had changed the beneficiary of the insurance to respondent (R. 43-45). He signed an AAF Personal Affairs Statement stating "the beneficiaries designated on my government life insurance are principal—Eleanor T. Farmakis, relationship: wife; amount—$10,000" (R. 34-36). Insured also executed an Officer's Personal Questionnaire in which he stated that Mrs. Eleanor T. Farmakis (respondent) was the beneficiary of his government life insurance (R. 36-37). There was no evidence whatsoever produced by petitioner other than her original designation as beneficiary prior to the marriage of insured to respondent.

This evidence was more than sufficient to justify a finding that the insured had effectively changed the beneficiary of his insurance even without application of the liberal

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[1] *Roberts* v. *U. S.*, 157 F. (2d) 906, cert. den. 330 U. S. 829.

interpretation that courts have consistently given cases of this kind since World War I.[2]

Respondents' Argument

Compliance With Veterans' Administration Regulations

The Courts are in agreement that strict compliance with Veterans' Administration regulations is not necessary. Such regulations are regarded as primarily for the protection of insurer and their use to defeat the intent of insured has not been permitted. The fact that war time conditions are involved has been a factor in shaping this policy.[3]

Evidence of Affirmative Act

The evidence of insured's affirmative action is found in the AAF Personal Affairs Statement (R. 34-36) and the Officer's Personal Questionnaire (R. 36-37). This evidence is not required to meet any rigid specifications as to form.[4]

Conflict in Decisions of Circuit Courts of Appeal

A review of Circuit Court decisions will reveal no conflict on basic principles, *viz.*, the necessity of proving intent plus an affirmative act.[5] The difference in the cases have been caused by variations in the facts.

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[2] *White* v. *U. S.*, 270 U. S. 175, 46 S. Ct. 274, 70 L. Ed. 530; *McKewen* v. *McKewen*, 165 F. (2d) 761, cert. den. 330 U. S. 829; *Mitchell* v. *U. S.*, 165 F. (2d) 758; *Collins* v. *U. S.*, 161 F. (2d) 64, cert. den. 331 U. S. 859; *Gann* v. *Meek*, 165 F. (2d) 857; *Shapiro* v. *U. S.*, 166 F. (2d) 240, cert. den. 334 U. S. 859; *Bradley* v. *U. S.*, 143 F. (2d) 573, cert. den. 323 U. S. 793; *Roberts* v. *U. S., supra.*

[3] *Farley* v. *U. S.*, 291 F. 238; *Bradley* v. *U. S., supra; Gann* v. *Meek, supra; Collins* v. *U. S., supra; McKewen* v. *McKewen, supra; Mitchell* v. *U. S., supra.*

[4] *Supra,* footnote (2).

[5] *Supra, Bradley* v. *U. S., Shapiro* v. *U. S., Mitchell* v. *U. S.*

The *Bradley* case[6] has repeatedly been interpreted by other circuits as consistent with their findings on basic principles but as distinguishable on the facts.[7] It is not in conflict in principle with the instant case. The evidence in the two cases differs however and this is the decisive factor.

Cohn v. *Cohn*, 171 F. (2d) 828, Cert. Den. April 25, 1949, is not in conflict with the decision here. The opinion in each case was written by Circuit Judge Prettyman. The *Cohn* case stands for the principle that a change in the named beneficiary of National Service Life Insurance must be "evidenced in writing" although that writing need not take any particular form. Both the AAF Personal Affairs Statement (R. 34-36) and the Officer's Personal Questionnaire (R. 36-37) meets this requirement.

Importance of Questions

The questions presented by this case are no different and no more compelling than those presented by this Court in numerous other cases where certiorari has been denied.[8]

The United States in its memorandum has expressed a lack of interest in the controversy other than to pay the insurance proceeds to the proper party and takes no position on whether the writ should issue. It would appear therefore that the government does not consider a review would be helpful to the administration of the program of veterans' insurance or other governmental function.

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[6] *Bradley* v. *U. S.*, *supra*.

[7] *Supra*, *Bradley* v. *U. S.*, *Collins* v. *U. S.*, *Gann* v. *Meek*, *Shapiro* v. *Shapiro*.

[8] *Bradley* v. *U. S.*, 143 F. (2d) 573, cert. den. 323 U. S. 793; *Roberts* v. *U. S.*, 157 F. (2d) 906, cert. den. 330 U. S. 829; *McKewen* v. *McKewen*, 165 F. (2d) 761, cert. den. 330 U. S. 829; *Shapiro* v. *U. S.*, 166 F. (2d) 240, cert. den. 334 U. S. 859; *Cohn* v. *Cohn*, 171 F. (2d) 828, cert. den. April 25, 1949.

Conclusion

It is respectfully submitted that the petition for a writ of certiorari should be denied.

Respectfully submitted,

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